

# Info for American Victims of Crime in Eswatini

## April 2018

Being the victim of a crime in a foreign country can be a devastating and traumatic experience. While no one can undo the emotional trauma, physical injury, or financial loss you may have experienced, the U.S. Embassy in Mbabane is ready to help. We are very concerned about violent crimes committed against U.S. citizens in Eswatini. We will assist you in managing the practical consequences of being a crime victim and provide you with information about accessing the local criminal justice system, as well as other resources for crime victims abroad and in the United States. This office can assist you to find appropriate medical care, contact family or friends on your behalf and explain how funds can be transferred. We can also help you to better understand the criminal justice system in Eswatini, which is very different from the system in the United States. The information included in this guide relating to the legal requirements in Eswatini is provided for general informational purposes only. The information may not be accurate or relevant to a particular case. Questions involving interpretation of Eswatini's laws should be addressed to legal counsel licensed to practice law in Eswatini. The investigation and prosecution of the crime is solely the responsibility of local authorities. The Federal Bureau of Investigation (FBI) may assist local authorities in certain cases of kidnapping, hostage-taking and terrorism.

**REPORTING CRIMES:** Victims of crime can file police reports or register complaints at any local police station. Crimes, however, should be reported in the jurisdiction where they occur and victims should be aware that there are no special police officers who specifically assist foreigners. The Eswatini police will not accept complaints filed by the U.S. Embassy or any other representative on a victim's behalf except in cases of extreme incapacitation. Victims must register their complaints at the relevant police station within 24 hours. Once the police record the report, they will provide the victim with a case reference number. If the victim would also like a copy of the actual police report, the fee is 20 Emalangeni (about US \$3).

If you have difficulties filing your police report with an official, please contact the U.S. Embassy immediately. You may need a police report to file for crime victim compensation or insurance reimbursement. If you do decide to file a report please send a copy to us, along with your address and phone number in the event we need to communicate with you. While we are not authorized to act as your legal representative, prosecutor or investigator, our office can help you track the progress of your case and advise you of any developments. A list of local attorneys willing and able to provide legal assistance to U.S. citizens can be found on the U.S. Embassy website.

**INVESTIGATIONS:** Many crime investigations never result in the arrest of a suspect. Eswatini police generally have limited resources to carry out complex investigations, and limited capabilities in areas such as preservation of crime scene evidence and utilization of DNA to assist in prosecutions. Victims, however, can expect some forensic evidence to be collected (fingerprints, photographs, etc.) at the scene. Victims can get information about the progress of the investigation from the investigator or from the officer-in-charge of the station. Victims should report threats, harassment, or intimidation by the accused or his/her family or friends to any police station, preferably the one that is handling the case. The case will remain open indefinitely if there is no arrest.

**ARRESTS:** If someone is arrested for a minor crime (other than murder, rape, armed robbery, or certain other violent offenses), the police can release the accused on "police bond," which is similar to bail in the United States. Bond occurs if two people guarantee that the individual will appear before the police officer assigned to the case on a certain date. The police may also require a monetary deposit in order to guarantee the accused will appear in court. For serious crimes including murder, rape, armed robbery, or assault with a deadly weapon, police bond is not available and the police will hold the accused. However the accused should be presented in court within 48 hours and may apply for release at any time. Usually persons arrested for violent crimes are not released on bail. The victim can request information on the arrest and should be prepared to identify the perpetrator in person or in a police line-up.

**PRETRIAL PERIOD:** Once a case file is opened, a criminal investigation officer forwards the file to a public prosecutor, where a state attorney reviews the file. If the state attorney is satisfied there is sufficient information a crime has been committed, s/he advises the police which charges to apply in the case. If the state attorney finds the evidence is insufficient, s/he instructs the police to conduct further investigation or close the file and release the accused. Any formal charges applied at the direction of the state attorney at this time may be different than those recorded at the time of the arrest.

As noted above, according to Eswatini law, the accused should be taken to court within 48 hours of arrest or be released on police bond while an investigation is pending. In practice, however, it is common for many individuals to spend considerable time in detention while the police investigation continues. For minor offenses, investigations and preparations for trial rarely take more than 30 days, though they have been known to last up to six months. If investigations for minor crimes last longer, the police sometimes abandon the case. If additional evidence is obtained at a later date, the police can re-arrest the suspects.

At times, prosecutors take the accused to court without evidence before the 48-hour limit expires. The magistrate may choose to allow the investigation to proceed, and the prosecutor is required to inform the court of the progress of the investigation every two weeks. The accused must also appear in person before the court every two weeks. A case can continue like this for 60 days for minor offenses and 180 days for serious offenses. If the magistrate deems that insufficient progress has been made in the investigation, s/he can dismiss the case. In practice, individuals can be detained for up to five years awaiting trial for serious offenses. Over one-half of the prison population in Eswatini is composed of prisoners awaiting trial.

**TRIAL:** Once in court the accused retains the right to remain silent. The accused has the right to legal representation, and, in cases, for which the death penalty (such as murder or armed robbery) or life sentences (such as arson or manslaughter) are possible, the state will provide a lawyer to any individual who cannot afford one.

Eswatini has two types of criminal courts, each used according to the severity of the alleged crime. For minor offenses, the accused is brought before a magistrate (i.e., a judge of a lower level court in Eswatini) who hears the case and has the power to declare the suspect guilty or innocent based on evidence provided by the prosecution and the defense. Unlike in the U.S., there is no jury. For serious offenses, such as murder, treason, robbery, or violent assault, a High Court tries the accused. The High Court includes a judge and two "assessors," who are respected citizens chosen by the court to provide advice to the judge. The judge is not bound by the opinions of the assessors, though he or she should provide a reasoning if their ruling disagrees with the assessors. In court, the

accused is asked to plead based on the charges prepared by the public prosecutor. The charges should be made available to the legal counsel of the accused beforehand. The prosecution must establish a prima facie case, i.e., that, at first view and without further investigation of evidence, there is a case against the accused. If no prima facie case exists, a magistrate has the right to dismiss the case and order the unconditional release of the accused. According to the law, the burden of proof is upon the prosecution to prove the accused committed the crime in question "beyond a reasonable doubt." After the prosecution and defense present their cases, the magistrate passes final judgment. Generally, all court cases in Eswatini are open to the public. Either side may appeal the verdict.

**SENTENCING:** Sentencing occurs after a conviction. At this stage the victim is given a chance to plead for leniency and the prosecutor may argue for a more severe sentence. Sentencing is at the discretion of the magistrate but has limits set out in local penal code. Some minor offenses allow for fines or community service as punishments. Once an inmate has completed their sentence, victims are not automatically notified of their release but can request this information from the police.

**APPEALS:** The accused can appeal the sentence. The length of the appeal process depends on the nature of the crime, court docket, and the attorneys. Appeals must be filed within 14 days of the sentence. Victims may be expected to testify during appeals, depending on the type of case.

**ATTORNEYS:** You may want to consider hiring a local attorney to secure appropriate legal guidance. Local legal procedures differ from those in the United States. Although the public prosecutor is responsible for prosecuting your case, an attorney you hire can promote your interests with the police and the court. While our office cannot recommend specific attorneys, we can provide you with a list of attorneys who have expressed interest in representing U.S. citizens. This list is available on the Internet at <https://sz.usembassy.gov/>.

**VICTIM COMPENSATION IN ESWATINI:** There is no national crime victim assistance office. The Eswatini government does not provide monetary compensation to crime victims. The court does not have authority to order the perpetrator to pay restitution.

**SPECIAL INFORMATION FOR CASES OF SEXUAL ASSAULT AND RAPE:** Physical evidence is very important in sexual assault cases, and can deteriorate as time passes. As such, victims should not change clothes, avoid bathing if possible, and have a physical exam at the first opportunity. You should take these steps even if you are unsure about whether to report the crime to police. If you decide to pursue a prosecution at a later time, these steps preserve evidence that will assist the prosecutor. A consular officer or after-hours duty officer from the U.S. Embassy may be able to accompany victims of sexual assault for the medical exam. Regardless of whether pursuing prosecution, victims should get medical attention to determine any injuries and to discuss treatment and prevention options for pregnancy and sexually transmitted diseases. Emergency contraception and HIV prophylaxis are generally available in Eswatini. While our office cannot recommend specific doctors, we can provide you with a list of doctors who have expressed interest in treating U.S. citizens. This list is available on the Internet at <https://sz.usembassy.gov/>.

The Sexual Offences and Domestic Violence Bill of 2009 (not yet ratified into Law) defines rape in Eswatini as an unlawful sexual act committed under any coercive circumstances, false pretenses or fraudulent means or with somebody who is incapable, in terms of the law, to know the nature of sexual actions. The definition also includes having sex with somebody under duress, psychological oppression, and fear of violence. The minimum sentence is 18 years incarceration while the maximum sentence is 40 years. The gravity of the sentences depends on the age of the victim and whether the offender is committing the crime for the first or multiple times. Repeat offenders are recorded and publicly announced in the National Register for Sex Offenders.

**SPECIAL INFORMATION FOR CASES OF DOMESTIC VIOLENCE:** Domestic violence is a serious problem in Eswatini, although it is often not considered a crime for religious, social and cultural reasons. Husbands are believed to be the head of household and have the right to discipline their wives. Further it is widely accepted that parents have the right to discipline their children, including corporal punishment. There are no specific laws to address domestic violence or child abuse but the general assault, battery, defilement, and murder-related charges are used to prosecute those whose violence is seen as excessive.

**SPECIAL INFORMATION FOR CASES OF CHILD ABUSE:** The Ministry of Social Welfare is responsible for the protection of children. Their authority to investigate allegations of child abuse is spelled out in the Social Welfare Act. Suspected child abuse can be reported at the nearest police station. Any citizen must report suspected child abuse. The abused child is placed in a government facility where specifically trained medical personnel assist them. Trained doctors and pediatricians work together to perform medical examinations of the abused child. The child is expected to testify if the abuser is charged with a crime, but the court orders a closed session to minimize trauma to the child.

**SPECIAL INFORMATION FOR CASES OF HOMICIDE:** Autopsies are required in any death that occurs outside a hospital and a family member or representative must witness the autopsy. Surviving family members can participate in the prosecution if they witnessed the crime. There are no special requirements for handling the estate in homicide cases.

**EMBASSY LOCATION:** Americans living or traveling in Eswatini are encouraged to register with the U.S. Embassy through the State Department's travel registration website (<https://step.state.gov/step/>) so that we can obtain updated information on travel and security within Eswatini. Americans without internet access may register directly with the Embassy. By registering, American citizens make it easier for the Embassy to contact them in case of emergency. The U.S. Embassy is located at Corner of MR103 & Cultural Centre Drive, P O Box D202, The Gables, Ezulwini

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